

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Subscriber Changes)
Provisions of the Telecommunications Act)
of 1996)

CC Docket No. 94-129

Southwestern Bell Telephone Company)
Petition for Waiver)

EXPEDITED PETITION FOR WAIVER

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, requests a limited waiver of the Commission's carrier-change authorization and verification rules, 47 C.F.R. §§ 64.1100-64.1190, where necessary to enable certain local exchange residential and business subscribers of Discount Communication, Inc. ("Discount") in Memphis, Tennessee to be transferred to BellSouth without prior customer approval for such transfer. BellSouth respectfully request expedited treatment of this Petition to ensure that these customers do not experience any service interruption and that the seamless transfer of Discount's customers to BellSouth occurs.

I. Background

BellSouth is the incumbent local exchange carrier operating in the States of Alabama, Georgia, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. In Tennessee, Discount provides local exchange, long distance and other telecommunications services primarily as a reseller.

Discount has filed for bankruptcy in the Western District of Tennessee. Prior to initiating the bankruptcy process, Discount had filed a Complaint with the Tennessee Regulatory

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Authority (“TRA”) and filed a subsequent Motion with the TRA seeking to require BellSouth to continue providing Discount service even though Discount had continually failed to pay BellSouth for such service.

The TRA eventually denied this Motion and allowed BellSouth to discontinue service to Discount. Because this would leave many of Discount’s customers without phone service, the TRA ordered BellSouth to begin providing service to Discount’s customers.¹ The TRA Order was issued on September 14, 2001. Under this Order, service transfers could begin on September 26, 2001.

As the TRA Order indicates, the transfer of the customers from Discount to BellSouth is not pursuant to a voluntary agreement with Discount, but BellSouth agreed to transfer these customer in response to concerns expressed by the TRA.² Discount has not provided a list of its customers to BellSouth. Indeed, BellSouth must search its records to determine who the customers are. Additionally, because this is not a voluntary transfer, BellSouth could not transfer these customers until ordered to do so by the TRA. Therefore, BellSouth seeks a waiver of the Commission’s 30-day notification and self-certification requirements set forth in the Commission’s *Fourth Report and Order*.³

Once the transfer is complete, pursuant to the TRA Order, BellSouth will send a post-transfer notice to the transferred customers. Attached as Exhibit C to the TRA Order is

¹ See TRA’s Order Denying Discount’s Motion to Continue Service and Approving BellSouth’s Proposal for Providing Service to Discounts Customer (“TRA Order”). A copy of the TRA Order is attached as Attachment 1.

² TRA Order at 14.

³ *In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers; Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policy and Rules Concerning Unauthorized Changes of Consumers Long Distance Carrier*, CC Docket Nos. 00-

BellSouth's post-transfer notice which was sanctioned by the TRA. Additionally, BellSouth is providing a copy of a supplemental notice that includes all information required by the *Fourth Report and Order*.⁴ Specifically, the post-transfer notice will: (1) provide the customer with notice of BellSouth's rates, terms and conditions; (2) inform subscribers that they have a right to switch carriers at any time; (3) include a toll-free number should subscribers need further assistance regarding the transfer or services; (4) inform subscribers that their local exchange service has been switched to BellSouth; and (5) explain that BellSouth has not assumed responsibly for handling outstanding complaints against Discount.⁵

II. Discussion

Section 1.3 of the Commission's rules authorizes the agency to waive any Commission rule if good cause is shown.⁶ Pursuant to Commission rules 64.1100 *et seq.*,⁷ a change in a subscriber's selection of a provider of telecommunications service shall not be made except in conformance with authorization and verification procedures prescribed by the Commission.⁸ Because Discount is in bankruptcy, the TRA has ordered that Discount's customers be transferred to BellSouth in order to avoid losing service. BellSouth therefore seeks a limited waiver of Commission's rules 64.1100 *et seq.* to allow those Discount customers to be transferred to BellSouth without their prior approval.

257 and 94-129, *First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129*, FCC 01-156, released May 15, 2001 ("*Fourth Report and Order*").

⁴ The supplemental notice is attached to this Petition as Attachment 2. The notice required by the TRA and the supplemental notice will be sent together in the same envelop to each customer.

⁵ *Fourth Report and Order*, ¶ 21. BellSouth will not charge the subscribers for the costs associated with the change.

⁶ 47 C.F.R. § 1.3.

⁷ 47 C.F.R. §§ 64.1100 *et seq.*

⁸ *Id.* § 64.1100(a).

It is well settled that the Commission has authority to grant a request for waiver of its rules for good cause shown.⁹ There is good cause for waiver of Sections 64.1100 *et. seq.* First, grant of the waiver is necessary to ensure the seamless transition of the affected customers from Discount to BellSouth, thereby avoiding unnecessary disruptions in local exchange service. This is especially important in this situation because many of the customers are low-income lifeline customers. In light of the significant number of customers involved, it would be impossible for BellSouth to contact each customer and obtain verification of their approval prior to the scheduled transfer date.

Second, the affected customers will receive post-transfer notification of the change, such notice shall also advise customers of their rights and options. Thus, the overriding policy goals of the Commission's carrier-change rules will be fully addressed. Third, the Commission has granted waiver requests by other carriers in circumstances similar to these.¹⁰

III. Conclusion

For the foregoing reasons, BellSouth requests that the Commission expeditiously grant its request for a limited waiver of the Commission's carrier-change authorization and verification

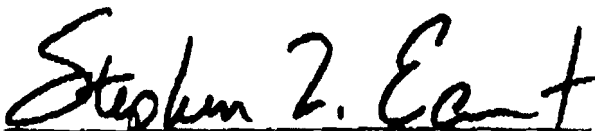
⁹ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁰ *Bell Atlantic Communications, Inc.'s Petition for Waiver*, CC Docket No. 94-129, *Order*, 15 FCC Rcd 18285 (2000); *McLeod/USA Petition for Waiver*, CC Docket No. 94-129, *Order*, 15 FCC Rcd 18285 (2000).

rules. Such a grant will allow the seamless transfer of Discount's affected customers to BellSouth.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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Dated: October 23, 2001

ATTACHMENT 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

September 14, 2001

IN RE:

**SECOND COMPLAINT OF DISCOUNT
COMMUNICATIONS AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC.**

**DOCKET NO.
00-01151**

**ORDER DENYING DISCOUNT'S MOTION TO CONTINUE SERVICE
AND APPROVING BELL SOUTH'S PROPOSAL FOR PROVIDING
SERVICE TO DISCOUNT'S CUSTOMERS**

This matter is before the Hearing Officer upon the *Motion of Discount Communications to Require BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding* ("Motion to Continue Service") filed on January 5, 2001 and the *Notice Regarding Breach of Escrow Arrangement and Intention to Terminate Service* ("Notice") filed by BellSouth Telecommunications, Inc. ("BellSouth") on July 25, 2001. An evidentiary hearing was held on August 22, 2001 at which time the Hearing Officer received evidence from the parties for the purpose of rendering a decision on the merits of the Motion to Continue Service and on BellSouth's Notice. Based upon the testimony and documentation presented during the Hearing and after a review of the record of this proceeding, the Hearing Officer determines that Discount's Motion to Continue Service should be denied and that BellSouth's proposal for providing service to Discount's customers should be approved, as set forth herein.

☐ State Specific
Copy to:
☒ Spaulding ☐
☐
Scan to: ☐ Smith

Notified of Scan/Faxed:
☐ / ☐ Lackey ☐ / ☐ Carver
☐ / ☐ Womay ☐ / ☐ Edenfield
☐ / ☐ Turner ☐ / ☐
Other: Phillips

TRAVEL OF THIS CASE

Background

On December 29, 2000, Discount Communications ("Discount") filed its *Second Complaint against BellSouth Telecommunications, Inc.* ("Second Complaint") with the Tennessee Regulatory Authority ("Authority" or "TRA"). Discount stated that the Second Complaint was being filed in response to an Order of the United States Bankruptcy Court for the Western District of Tennessee, which "directed Discount to file by the end of the year 'a formal complaint with the TRA asserting any and all unresolved billing disputes' which are 'subject to the jurisdiction of the TRA.'"¹

On January 5, 2001, Discount filed its *Motion of Discount Communications to Require BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding* ("Motion to Continue Service") which stated that on January 3, 2001, United States Bankruptcy Judge William Houston Brown had orally announced that he had decided to lift the automatic stay that prevented BellSouth from terminating service to Discount. On January 22, 2001, Judge Brown entered a written order which stated:

In light of the court's finding, the court further finds that cause exists to completely lift the automatic stay pursuant to 11 U.S.C. § 362 with respect to BellSouth and to restore BellSouth to all of its pre-petition rights and the stay is

¹ *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.* (December 29, 2000) p. 2, quoting from *In re ATM Discount Communications, Inc.*, Case No. 00-33928-B, Judge William Houston Brown's Order Granting Motion of BellSouth Telecommunications, Inc. for Adequate Protection and to Lift Stay (filed December 4, 2000), pp. 2-3. Judge Brown's Order also required the following, at pages 1-2:

1. Debtor shall pay the greater sum of \$50,000 or the amount held in escrow by Boulton, Cummings, Conner and Berry, P.C., to BellSouth as adequate assurance of payment of post-petition services provided by BellSouth by the close of business on November 27, 2000.
2. As additional adequate assurance, the Debtor shall pay the sum of \$2,500.00 per day in good funds into an account as directed by BellSouth, which amounts shall be applied by BellSouth towards the post-petition obligations of the Debtor....

hereby lifted. BellSouth and the Debtor [Discount] are free to exercise whatever rights they deem appropriate before the Tennessee Regulatory Authority.²

Judge Brown's Order also stated:

Pending any appeal of this order, the Debtor [Discount] may continue escrowing payments of \$2500 per day in accordance with this court's order of November 30, 2000 provided further that nothing in this order shall be deemed to require BellSouth to accept future payments from this Debtor or shall be deemed a waiver of BellSouth's rights in the event such payments are accepted. Pending further order of the court, the \$50,000 security deposit paid to BellSouth pursuant to this court's order of November 30, 2000 shall be retained by BellSouth.³

As a result of the issuance of the Bankruptcy Court's Order, the Hearing Officer met with the parties and the Consumer Advocate and Protection Division, Office of the Attorney General ("Consumer Advocate")⁴ on January 23, 2001 to discuss further action in the case. Based on the filings of the parties and the discussions during the January 23, 2001 meeting, the Hearing Officer established a schedule for BellSouth to file responses to Discount's Motion to Continue Service and the Second Complaint.

On January 26, 2001, BellSouth filed its Response to Discount's Motion to Continue Service ("Response"). In its Response, BellSouth addressed the Authority's previously articulated concerns regarding the provision of service to Discount's customers in the event that BellSouth terminates service to Discount and set forth a proposal for voluntarily accepting Discount's customers following such termination. BellSouth requested that its proposal be approved by the Authority.⁵

² *In re ATM Discount Communications, Inc.*, Case No. 00-33928-B, Order Denying Debtor's Motion to Assume or Reject Executory Contract and Granting Motion to Lift Automatic Stay (filed Jan. 22, 2001), p. 1.

³ *Id.*, p. 2. Reference to November 30, 2000 order refers to date the proposed order was received by Bankruptcy Court. The order was entered by Judge Brown and filed on December 4, 2000.

⁴ The Consumer Advocate filed a *Petition to Intervene* on January 11, 2001 which was granted January 26, 2001. See *Order Granting Consumer Advocate's Petition to Intervene and Setting Filing Schedule and Status Conference* issued by the Hearing Officer on January 26, 2001.

⁵ See, *BellSouth's Response to Discount Communications' Motion to Require BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding* (January 26, 2001), pp. 7-8.

A Status Conference was held on January 31, 2001 with all parties attending. Based upon the information presented by the parties during the January 31, 2001 Status Conference, the Hearing Officer determined that a new escrow arrangement be put into place between the parties which would require Discount to pay \$2,800 per calendar day, instead of \$2,500 per business day, for the duration of the agreement. The parties agreed that in the event that Discount fails to make the required escrow payments, BellSouth would notify the Hearing Officer or the Authority immediately and the Hearing Officer would have five (5) days from the date of receipt of such notification to act upon any request by BellSouth to terminate service to Discount. As a result of the new escrow arrangement, the parties requested that the Hearing Officer not act on Discount's Motion to Continue Service or on BellSouth's proposal to provide service to Discount's customers, but instead, hold both the motion and request in abeyance.⁶

The Immediate Proceedings

On July 25, 2001, BellSouth served upon Discount and filed with the Authority its *Notice Regarding Breach of Escrow Arrangement and Intention to Terminate Service* ("Notice"). As a part of its Notice, BellSouth alleged that Discount had failed on numerous occasions to make the proper and timely payments into the established escrow account as agreed by the parties. The Notice was supported by an affidavit from a representative of the escrow agent setting forth dates in the months of April, May, and June 2001, when Discount failed to make certain payments into the escrow account. Upon receiving the Notice, the Hearing Officer set a meeting of the parties for 3:30 p.m. Friday, July 27, 2001.⁷ During that meeting, the Hearing Officer proposed that

⁶ See, Transcript of January 31, 2001 Proceedings, pp. 48-55.

⁷ BellSouth filed an Amended Notice on July 26, 2001 which corrected the shortfall amount to reflect the deficiency in payments as \$89,600 as of the date of the escrow agent's affidavit instead of \$92,400 as stated in the July 25, 2001 Notice. BellSouth acknowledged during the July 31, 2001 meeting of the parties that the filing of the Amended Notice on July 26, 2001 extended the five (5) day notice period to August 2, 2001.

since Discount's Motion to Continue Service had been held in abeyance as a result of the new escrow arrangement, a hearing should proceed on Discount's Motion to Continue Service. The Hearing Officer instructed the parties to present evidence concerning the alleged breach of the escrow arrangement and BellSouth's proposal to accept Discount's customers. The parties agreed to this procedure and to the setting of an evidentiary hearing for 1:00 p.m. Tuesday, July 31, 2001. Thereafter, the Hearing Officer would render a decision on Discount's Motion to Continue Service, which could precipitate a decision on BellSouth's proposal to accept Discount's customers.

On Monday, July 30, 2001, the Hearing Officer was advised by the parties, via telephone, that Discount had filed a petition for relief in the United States Bankruptcy Court in Memphis, Tennessee.⁸ The parties were reluctant to insist on proceeding with the evidentiary hearing due to the automatic stay imposed pursuant to the filing of Discount's bankruptcy petition and agreed that the hearing scheduled for July 31, 2001 should not proceed. On August 1, 2001, the Hearing Officer issued an Order staying this matter before the Authority pending the lifting or dissolution of the automatic stay. The Hearing Officer further determined that BellSouth's Notice would not be effective until such time as the Hearing Officer or Authority could complete an evidentiary hearing and issue an order on Discount's Motion to Continue Service.

On August 15, 2001, BellSouth filed a *Supplement to Amended Notice Regarding Breach of Escrow Agreement and Intention to Terminate Service and Motion for Emergency Hearing and Clarification of Escrow Requirement*, which stated that the Bankruptcy Court had decided to lift the automatic stay "to allow the parties to proceed to address termination of service in the

⁸ A copy of Discount's Bankruptcy petition was filed in this docket on July 31, 2001 and reveals that Discount actually filed its petition in the U.S. Bankruptcy Court around 1:00 p.m. on Friday, July 27, 2001.

TRA."⁹ Discount filed its Response on August 16, 2001. On August 17, 2001, the Hearing Officer directed BellSouth to file a copy of either the transcript from the Bankruptcy Court's August 15, 2001 proceeding or the Court's order resulting therefrom.

On August 20, 2001, BellSouth filed a copy of the Bankruptcy Court's written order that had been entered that day. In the Court's August 20, 2001 Order, Bankruptcy Judge Jennie D. Latta stated the following:

Upon a totality of the circumstances, the Court finds that the Court's prior order entered on January 22, 2001 in the Debtor's [Discount's] prior Case No. 00-33928-B is res judicata with respect to the matters raised by BellSouth's motion. Accordingly, the Court finds that the automatic stay pursuant to 11 U.S.C. § 362 should be and is hereby lifted to permit the Debtor and BellSouth to pursue before the Tennessee Regulatory Authority ("TRA") all matters within the TRA's jurisdiction, including, but not limited to, all pending matters relating to the Debtor and BellSouth's petition to terminate service to the Debtor. The Court further finds that if the TRA approves termination of service then the automatic stay is lifted to permit BellSouth to terminate service in accordance with any order from the TRA. The Court further finds that the automatic stay is further lifted to permit the Debtor and BellSouth to pursue all of their rights of appeal from the TRA to the Tennessee Court of Appeals.

....

The Court further finds that the question as to the amount of any security deposit or daily escrow to which BellSouth is entitled to for postpetition service pursuant to 11 U.S.C. § 366 should under the circumstances, be determined by the TRA. Accordingly, the Court sua sponte abstains from deciding this issue and directs BellSouth to raise such issue before the TRA.¹⁰

On August 20, 2001, by the agreement of the parties, the Authority reset the evidentiary hearing for August 22, 2001 at 5:00 p.m. A public notice was issued on August 21, 2001, confirming the hearing date.

⁹ *Supplement to Amended Notice Regarding Breach of Escrow Agreement and Intention to Terminate Service and Motion for Emergency Hearing and Clarification of Escrow Requirement* (August 15, 2001), p. 2.

¹⁰ In re: ATM Discount Communications, Inc., Case No. 01-31167-L, *Order Granting Motion of BellSouth Telecommunications, Inc. to Lift Automatic Stay* (August 20, 2001), pp. 1-2.

The August 22, 2001 Evidentiary Hearing

The evidentiary hearing was held in the Hearing Room of the Tennessee Regulatory Authority on August 22, 2001. Counsel and parties in attendance were as follows:

Discount Communications, Inc. - **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062 and **Morris Harris** and **David Mills** of Discount Communications;

BellSouth Telecommunication, Inc. - **Joelle Phillips**, Esquire, **Guy Hicks**, Esquire, and **Paul Stinson**; 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300;

Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter - **Vance L. Broemel**, Esquire, Cordell Hull Building, 2nd Floor, 425 5th Avenue North, Nashville, TN 37243.

Without objection, members of Authority Staff were permitted to ask questions of the witnesses during the hearing. Discount did not present any witnesses to testify on its behalf during the Hearing. Paul Stinson, regulatory manager for BellSouth, testified on the behalf of BellSouth.

At the outset of the Hearing, the parties agreed to the admissibility of the Affidavit of Michael P. Coury which was submitted by BellSouth to demonstrate the fact that Discount had failed to make required escrow payments.¹¹ In his Affidavit, Mr. Coury states that he is an attorney with Waring Cox, PLC, the law firm monitoring the escrow account established at First Tennessee Bank. Attached to Mr. Coury's Affidavit is a calendar summary of deposits made by Discount during the time period from March 31, 2001 through August 21, 2001. The calendar summary reveals that Discount missed the following number of payments in each of the corresponding months: April, 2001 - 8; May, 2001 - 11; June, 2001 - 13; and July, 2001 - 18. The summary also reveals that there were no payments to the escrow account from July 26, 2001 to the date of the Affidavit, August 21, 2001.¹²

¹¹ Counsel for Discount stipulated to the accuracy of the Affidavit of Michael P. Coury, for the purposes of the Hearing, stating, "...I think that it can be agreed that Discount has missed a substantial number of escrow payments." Transcript of Hearing (August 22, 2001) pp. 10-11.

¹² See, Hearing Exhibit No. 1, Affidavit of Michael P. Coury (August 21, 2001).

Discount did not make an opening statement or present a witness and rested its case on the contents of the Motion to Continue Service itself. Discount characterized the Motion to Continue Service as being based on the agreement between Discount and BellSouth that Discount would be permitted to continue receiving service from BellSouth as long as Discount continued to make the necessary escrow payments. Discount acknowledged, "... and we have obviously missed the escrow payments."¹³

In addition to introducing the Affidavit of Michael Coury, BellSouth presented its case through the testimony of Paul Stinson. Mr. Stinson explained his responsibility for regulatory matters involving Discount and his familiarity with the account history between BellSouth and Discount. Mr. Stinson testified that initially, BellSouth had been informed by the escrow agent that Discount was making the escrow payments. In July, BellSouth learned that the previous reports from escrow agent were in error and that, in fact, Discount had missed a number of payments into the escrow account.¹⁴

Mr. Stinson has been involved in two activities relating to this matter: developing a process for converting Discount's customers over to BellSouth and developing a notification letter to Discount's customers in the event that BellSouth terminates service to Discount.¹⁵ Regarding the process of converting Discount's customers to BellSouth, Mr. Stinson stated that upon authorization from the Tennessee Regulatory Authority, BellSouth would put together a team for the purpose of accessing the accounts of end-users currently being served by Discount and changing the service provider indicated on those accounts from Discount to BellSouth. At the time of the conversion for each end-user, BellSouth will send a notification letter to those

¹³ Transcript of Hearing (August 22, 2001) p. 14.

¹⁴ See, Transcript of Hearing, August 22, 2001, (Testimony of Mr. Paul Stinson) pp. 16-17.

¹⁵ *Id.*, at p. 16.

end-users informing them of this change. Mr. Stinson identified a draft of the proposed notification letter which was placed into the record as Exhibit 4.¹⁶

The proposed Notification Letter informs the end-user that on a certain date, pursuant to an order from the Tennessee Regulatory Authority, the end-user's service provider was changed from Discount to BellSouth.¹⁷ The letter also advises the end-users that they are not required to maintain their service with BellSouth, and can obtain service from any other provider of their choice. The end-users are instructed that if they wish to continue service with BellSouth, they need to call BellSouth at the phone number provided in the letter so that BellSouth may obtain certain necessary account information to ensure proper billing for that account.¹⁸

According to Mr. Stinson, changing the service provider indication on the customers' account records from Discount to BellSouth is essentially a records-only change. The changeover would not disrupt existing service to any of Discount's customers. Mr. Stinson estimated that the team would consist of approximately eight people to make these changes.¹⁹ The conversion process would have to be done on an account-by-account basis. According to Mr. Stinson, assuming that Discount had 3900 customers at the end of June, BellSouth would have to modify 3900 different accounts on a case-by-case basis. Mr. Stinson estimated that the conversion process could be completed no later than four (4) weeks from the time BellSouth starts the process.²⁰ He confirmed that it would take four weeks to convert all of the customers, not four weeks to convert one customer.²¹

Mr. Stinson testified that BellSouth intends to switch the customers with the features they

¹⁶ *Id.*, at p. 18.

¹⁷ *Id.*, at pp. 19-20.

¹⁸ *Id.*, at p. 20.

¹⁹ *Id.*, at p. 21.

²⁰ *Id.*, at pp. 22-23.

²¹ *Id.*, at pp. 48-49.

currently have with Discount. It was his understanding that most of Discount's customers currently have the toll blocking feature on their lines. During the conversion process, if the toll blocking feature is not on the account, BellSouth will add that feature to limit the customer's ability to incur substantial long distance or third-party charges from another service provider.²² BellSouth typically uses this feature in cases where BellSouth does not have a credit history for a given customer.²³ BellSouth will provide the toll blocking feature at no charge to the end-user.²⁴

Originally, BellSouth proposed a toll blocking feature which would prevent the customer from dialing directory assistance.²⁵ The Discount customers would get six free local directory assistance calls per month as provided for in BellSouth's tariff except where the toll blocking would inhibit their ability to call directory assistance.²⁶ Mr. Stinson testified that BellSouth would consider blocking third-party calls without blocking toll or local directory assistance as an alternative that would minimize BellSouth's exposure to substantial third-party charges.²⁷ Mr. Stinson stated that where a customer is eligible for an exception under the directory assistance tariff he or she must contact BellSouth to verify that eligibility. BellSouth agreed to put this information in the Notification letter.²⁸

For Discount's end-users, BellSouth will waive the normal \$20.00 one-time service charge for modifications of this type.²⁹ In addition to waiving the \$20.00 service charge, BellSouth will absorb the cost of overtime charges for the employees performing the changeovers and the cost of mailing the customer notification letter, and will not attempt to

²² *Id.*, at pp. 21-22.

²³ *Id.*, at p. 22.

²⁴ *Id.*, at p. 22.

²⁵ *Id.*, at p. 29.

²⁶ *Id.*, at pp. 39-40.

²⁷ *Id.*, at p. 37.

²⁸ *Id.*, at p. 40.

²⁹ *Id.*, at p. 21.

recover them from either Discount or the end-users.³⁰

BellSouth will require information from the customer to insure that it has the proper billing information, name, and address of the person who actually will be responsible for the account. BellSouth will also search its databases, to determine whether a customer has a past due amount from a previous account. BellSouth expects such a customer to pay off any past due amount.³¹ BellSouth will look at the types of charges involved and determine if they are for regulated services or unregulated services. In the event that the past charges are for regulated services that have been provided under another account, BellSouth expects the customer to make payment on those charges. BellSouth will offer customers a payment plan that will allow them to spread payments of these charges over a period of up to twelve (12) months. During that time, the customers would need to make those monthly payments on time in addition to paying their ongoing bills for service in a timely manner.³²

Mr. Stinson testified that BellSouth would require a deposit from customers having an outstanding balance for unregulated charges, or such customers could agree to a payment plan allowing one year to pay those charges in the same manner as regulated charges.³³ According to Mr. Stinson, "The deposit is only in the event they refuse to make any payment at all. Then to continue service, we would require a deposit in the amount of the past due charges for non-regulated services."³⁴ The same options would be available to Lifeline customers who have past due accounts.³⁵

In the event that the customer refuses to make payment in full or accept the twelve (12)

³⁰ *Id.*, at p. 23.

³¹ *Id.*, at p. 24.

³² *Id.*, at p. 25.

³³ *Id.*, at p. 44.

³⁴ *Id.*, at p. 45.

³⁵ *Id.*, at p. 45.

month payment plan, BellSouth will request a deposit in the amount of the past due amount, but the past due amount will still remain outstanding.³⁶ As to customers with no credit or a poor credit history, BellSouth will require a deposit of approximately two (2) months of billing. Where BellSouth has no billing history on such a customer and cannot determine what that amount is, a typical charge will be a \$75.00 deposit. That customer can avoid the need for paying a deposit to BellSouth if he or she will agree to keep the toll-blocking feature in effect on the account, which will be at no charge.³⁷

Any customer that Discount has indicated is a Lifeline customer will have his or her service transferred to BellSouth as a Lifeline customer. The Lifeline customers will have to prove their eligibility in order to retain the Lifeline discount by providing the same documentation as that of any new customer seeking eligibility for Lifeline. BellSouth would normally require this proof in advance of providing Lifeline service to a new customer. In this instance, if the customer has been identified by Discount as a Lifeline customer, BellSouth will cut him or her over to its Lifeline rates and continue providing that service at those rates pending the provision of this documentation.³⁸ Also, if customers do not already have Lifeline service, but think that they might be eligible for Lifeline service, they can call BellSouth and BellSouth will handle that inquiry as well.³⁹

BellSouth will begin directly charging end-users for service on the date it receives authorization from the TRA to proceed with the conversion.⁴⁰ The customers would be charged

³⁶ *Id.*, at pp. 25-26.

³⁷ *Id.*, at p. 26.

³⁸ *Id.*, at pp. 46-48.

³⁹ *Id.*, at p. 20.

⁴⁰ *Id.*, at pp. 23-24.

the tariff rates which BellSouth charges in that service area under the BellSouth tariffs in effect on the effective date of this transfer.⁴¹

Mr. Stinson acknowledged that Discount is a prepaid service and, at the time of the changeover, many of Discount's customers will have already paid in advance for a month's service. Because BellSouth intends to begin billing the customers effective as of the date of the Authority's order, customers will have to start paying BellSouth for service during that same month and may end up paying for the same service twice.⁴² Mr. Stinson could not agree that BellSouth would be willing to provide service to those customers until the expiration of the period of time from which they have already paid without charging them additional money. According to Mr. Stinson, BellSouth would have no way of knowing what period of time applies to each individual account, and therefore it would greatly increase BellSouth's cost of performing this conversion by having to track that information.⁴³

During this process, BellSouth will honor any valid service order from another service provider that wishes to provide service to one of these end-users.⁴⁴ After the conversion process is completed, BellSouth will begin a process to check each account to determine whether the customer has contacted BellSouth. For those accounts where the customer has not contacted BellSouth, a second notification letter will be sent. That letter will repeat most of the information in the first letter, advise the customer that this is a second notice and instruct the customer of the need to contact BellSouth by a specific date. If the customer fails to do so, BellSouth will disconnect service.⁴⁵

⁴¹ *Id.*, at p. 51.

⁴² *Id.*, at p. 30.

⁴³ *Id.*, at p. 31.

⁴⁴ *Id.*, at p. 27.

⁴⁵ *Id.*, at p. 28.

Mr. Stinson testified that BellSouth has not performed this type of conversion for end-users of any other service provider in Tennessee. BellSouth is developing this process in response to concerns expressed by the Authority's Directors as to the effect of termination of service on current end-users of Discount.⁴⁶

The Evidentiary Hearing concluded with each party making closing statements. BellSouth stated that it would revise its proposed Notification Letter and submit a new letter to the parties and the Hearing Officer.

BellSouth's Notification Letter

On August 23, 2001, BellSouth filed with the Authority a revised proposed Notification Letter which altered BellSouth's proposal as to the toll blocking feature and provided additional language regarding the availability of directory assistance, long distance and emergency service or 911 calls. BellSouth's cover letter dated August 23, 2001, explaining the modifications in the Notification Letter, and the revised Notification Letter are attached to this Order as **Exhibit A**.

On September 7, 2001, a conference call was held between counsel for BellSouth, counsel for Discount and TRA Staff members to discuss additional concerns regarding the changeover process and the revised Notification Letter. The Hearing Officer participated in the conference call. The Consumer Advocate was not able to participate but had no objection to the conference call proceeding in his absence. As a result of the cooperation of the parties during the conference call, several concerns were resolved and BellSouth agreed to make additional revisions to the Notification Letter. On September 7, 2001, BellSouth filed a letter outlining its agreement to implement additional procedures in the changeover process and providing a second revised Notification Letter. BellSouth's letter of September 7, 2001 and the second revised Notification Letter are attached to this Order as **Exhibit B** and **Exhibit C**, respectively.

⁴⁶ *Id.*, at pp. 28-29.

Selected Provisions of BellSouth's General Subscriber Services Tariff

In reviewing BellSouth's proposal for providing service to Discount customers, the Hearing Officer is compelled to examine portions of BellSouth's General Subscriber Services Tariff ("GSST") to determine whether the terms and conditions under which service will be provided to Discount customers are in accord with BellSouth's GSST. The Hearing Officer has reviewed the following selected provisions from BellSouth's GSST:

General Subscriber Services Tariff, effective date: October 20, 1992, section A2., General Regulations, section A.2.3 Establishment And Furnishing of Service (Cont'd), section A2.3.5 Application for Service, section B:

- B. The Company reserves the right to refuse service to any applicant who is found to be indebted *for undisputed regulated charges* to the Company for *telephone service provided in Tennessee or in any other state in which the Company operates* until satisfactory arrangement have been made for the payment of all such indebtedness. The Company may also refuse to furnish service to any applicant desiring to establish service for former subscribers of the Company who are indebted for previous service, regardless of the listing requested for such service, until satisfactory arrangements have been made for the payment of such indebtedness. *All regulations as stated in A2.2.10 will apply.*

General Subscriber Services Tariff, effective date: September 7, 1995, section A2, General Regulations, section A2.A Payment Arrangements and Credit Allowances (Cont'd), section A2.4.2 Deposits, section A. and B.:

- A. Any applicant who is unable to establish a satisfactory credit standing with the Company or any subscriber whose credit standing has become impaired may also be required to deposit a sum up to an amount equal to either the charge for two months' local service or the charge for the estimated toll messages during a like period, or both. If the Company does not have previous records of actual billing for a customer, the deposit shall be based on the average of two months' billing for all new customers in the area. This two months' average will exclude connection charges and partial month's billing. Any such deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

- B. In addition to such deposit, any applicant who is unable to establish a satisfactory credit standing with the Company or any subscriber whose credit standing has become impaired, may also be required to deposit a further sum up to an amount equal to:
1. The applicable basic termination charge for any service furnished the subscriber, and/or
 2. The total charges which would be due for the applicable minimum service period for any service furnished the subscriber.

General Subscriber Services Tariff, effective date: October 7, 1999, section A2. General Regulations, section A2.4 Payment Arrangements and Credit Allowances (Cont'd), section A2.4.3 Payment for Service, section H:

- H. Residence subscribers with overdue bill balances for their existing service, which has been temporarily suspended for nonpayment, who are unable to pay the charges in full may be allowed to retain their local service if they elect to have a full toll restriction placed on their existing service, at no charge, until the charges are paid. These subscribers may arrange to pay the outstanding balance in up to twelve (12) monthly installment payments.

FINDINGS AND CONCLUSIONS

Based upon the record of this proceeding, the testimony and affidavits of witnesses, BellSouth's proposed modifications to its proposal for providing service as well as a review of BellSouth's GSST provisions, the Hearing Officer makes the following findings of fact and conclusions of law:

The TRA's Authority to Proceed with this Matter

As set forth in the background section above, the United States Bankruptcy Court for the Western Section issued an Order on August 20, 2001, lifting the automatic stay which had been in place pursuant to 11 U.S.C. § 362,

... to permit the Debtor and BellSouth to pursue before the Tennessee Regulatory Authority ("TRA") all matters within the TRA's jurisdiction, including, but not limited to, all pending matters relating to the Debtor and BellSouth's petition to terminate service to the Debtor.⁴⁷

The Bankruptcy Court also found that

... the question as to the amount of any security deposit or daily escrow to which BellSouth is entitled to for postpetition service pursuant to 11 U.S.C. § 366 should under the circumstances, be determined by the TRA. Accordingly, the Court sua sponte abstains from deciding this issue and directs BellSouth to raise such issue before the TRA.⁴⁸

Also, the Bankruptcy Court's determination of BellSouth's request for application of the pre-petition \$50,000 deposit was denied without prejudice "pending resolution of pending issues before the TRA."⁴⁹

The August 20, 2001 Order of the Bankruptcy Court lifted the stay imposed on this docket and further empowered the TRA to make determinations over pending issues in this matter. First, the TRA was permitted to proceed with its hearing on August 22, 2001 and render a decision on Discount's Motion to Continue Service and BellSouth's proposal to provide service to Discount's customers. Further, the Bankruptcy Court has deferred to the TRA to make determinations regarding the security deposit and funds in the escrow account.

The orders of the Bankruptcy Court clearly permit the TRA to act on the issues of continuation of service from BellSouth to Discount, the provision of service to Discount's customers in the event of termination of service to Discount and the disposition of the escrow account and the security deposit.

⁴⁷ In re: ATM Discount Communications, Inc., Case No. 01-31167-L, *Order Granting Motion of BellSouth Telecommunications, Inc. to Lift Automatic Stay* (August 20, 2001), p. 1.

⁴⁸ *Id.*, at p. 2.

⁴⁹ *Id.*, at p. 2.

Discount's Motion to Continue Service

The Evidentiary Hearing went forward on August 22, 2001 on the Motion to Continue Service filed by Discount. No proof in support of the Motion to Continue Service was offered by Discount. The proof submitted by BellSouth was admitted without opposition and demonstrates that the basis for Discount's Motion to Continue Service can not be sustained.

The Affidavit of Michael P. Coury and the supporting escrow payment summary demonstrate that Discount missed payments to the escrow account in an increasing number each month from April to July. On July 27, 2001, Discount stopped making escrow payments entirely. No explanation was offered by Discount as to the reason why certain escrow payments were not made or why no payments were made at all after July 27, 2001. There was no evidence offered to demonstrate that Discount attempted to notify BellSouth in advance of its inability to make the required escrow payments. Further, from the record of payments and the testimony of Mr. Stinson, there is no evidence to show that Discount offered or attempted to make even a partial payment on those occasions when it missed making the escrow payments. In short, no reason was offered by Discount as to why the Hearing Officer should permit Discount to continue receiving service from BellSouth.

A reasonable person would know that missing a significant number of payments over the period of several months would put the continuation of the escrow arrangement in jeopardy, thereby putting at risk the continuation of service from BellSouth to Discount. While BellSouth may not have been aware of the deficiency of payments due to incorrect reports from the escrow agent, Discount would have had full knowledge of its continuing default under the escrow arrangement. The only question that remains unanswered is, if Discount has continued to collect payments from its customers for the service it has provided to those customers, why, on so many

occasions leading up to BellSouth's Notice on July 25, 2001, did Discount not make some type of payment or overture for making payments to BellSouth so that service to Discount's customers would not be jeopardized?

Given the fact and the acknowledgement by Discount that under the Motion to Continue Service and the agreement of the parties, continuation of service to Discount is conditioned upon Discount continuing to make payments to the escrow account, the failure or refusal to make such payments removes the basis upon which Discount may continue to receive service from BellSouth. Based upon the record in this proceeding demonstrating Discount's failure to abide by its agreement and the lack of any explanation from Discount regarding that failure, the Hearing Officer finds that there is no basis in law or fact upon which the Motion to Continue Service can be granted and therefore, denies Discount's Motion to Continue Service.

BellSouth's Proposal for Termination of Service to Discount and for Providing Service to Discount's Customers

In its Response to Discount's Motion to Continue Service, filed on January 26, 2001, BellSouth set forth a proposed procedure for terminating service to Discount and providing service to Discount's customers. BellSouth's proposal was explained in the following manner:

BellSouth will assume responsibility for providing service to the existing customers of Discount on the date that BellSouth terminates service to Discount. Beginning on that date, BellSouth will begin changing the service records of Discount's customers to reflect BellSouth as the service provider. Although this process may require several weeks to complete, the change will be effective on the date that BellSouth terminates service to Discount, and BellSouth will not bill Discount for any services to these customers after this termination date. Service to Discount's customers will not be interrupted, and BellSouth will waive the \$20 reconnection charge that is normally applied in this situation. As customers are switched, BellSouth will send a letter to each customer explaining the change in their service provider and advising the customer that they are not obligated to keep their

BellSouth service, but are free to choose any other service provider.

Once this conversion is completed, BellSouth will treat these customers in accordance with current tariffs. Any customers with an outstanding balance from a previous BellSouth account will be allowed up to one year to address this outstanding balance under the terms and conditions of BellSouth's Tariff A2.4.3.1. Other matters, including credit history information, deposit requirements (if any), and documentation to qualify for Lifeline service will be addressed under the terms and conditions of the applicable BellSouth tariffs and as required by federal and state law.⁵⁰

BellSouth's proposal was explained in detail and subjected to cross-examination through the testimony of Paul Stinson during the Evidentiary Hearing.

Having denied Discount's Motion to Continue Service, the Hearing Officer must now examine the procedure proposed by BellSouth for providing service without interruption to Discount's customers. During the Evidentiary Hearing, Discount stated that it would not take a position regarding the terms of the transition of Discount's customers, leaving that decision to the TRA and the Consumer Advocate.⁵¹

BellSouth's proposal for providing service to Discount's customers, which originated in BellSouth's Response to Discount's Motion to Continue Service, has undergone modifications and refinements through the testimony of Paul Stinson during the Evidentiary Hearing, the circulation of several drafts of a Notification Letter among the parties and discussions between the parties and the TRA staff. As a result, BellSouth's proposal is comprised of the original statement in BellSouth's Response filed on January 26, 2001 (set forth above), BellSouth's letters to the Hearing Officer dated August 23, 2001 and September 7, 2001, (Exhibit A and Exhibit B, respectively) and the most recent version of BellSouth's Notification Letter, filed

⁵⁰ *BellSouth's Response to Discount Communications' Motion to Require BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding* (January 26, 2001), p. 7.

⁵¹ *See*, Transcript of Hearing, August 22, 2001, p. 56.

with the Hearing Officer on September 7, 2001 (Exhibit C). In making a determination as to the reasonableness and fairness of BellSouth's proposal, the Hearing Officer reviewed the above mentioned documentation and the testimony of Paul Stinson and examined relevant sections of BellSouth's General Subscriber Services Tariff.

The Hearing Officer recognizes that BellSouth is responding to the concerns of the Authority in putting forth its proposal for providing service to Discount's customers. Specific concerns regarding the proposal were raised during the Evidentiary Hearing through the cross-examination of Mr. Stinson and in subsequent conferences between the parties and the TRA Staff. Through its letter of August 23, 2001, BellSouth responded to certain concerns by amending its proposed conversion process to permit Discount customers with the toll blocking feature to access Directory Assistance service. The Hearing Officer approves the modifications set forth in BellSouth's correspondence dated August 23, 2001 and orders that those modifications be incorporated as a part of the proposal for providing service to Discount customers.

The Hearing Officer also recognizes that additional concerns were raised during the cross-examination of Paul Stinson which were not addressed in BellSouth's modifications of August 23, 2001. Under the procedure explained by Mr. Stinson, BellSouth proposed to provide customers with past due *regulated* charges the option of a twelve (12) month payment plan with no discontinuation of service but left open the possibility that BellSouth may cut off local service to a Discount customer for non-payment of *unregulated* or non-regulated charges. Section A2.3.5 of BellSouth's General Subscriber Services Tariff permits BellSouth to "refuse service to any applicant who is found to be indebted for undisputed *regulated* charges to the Company for telephone service provided in Tennessee or any other state in which the Company operates until

satisfactory arrangements have been made for the payment of all such indebtedness."⁵²

BellSouth initially proposed during the Evidentiary Hearing to refuse service to any customer found to be indebted for undisputed *unregulated* charges if that customer refused to put up a deposit in the amount of the charges or to make payment of those charges.

Following the September 7, 2001 conference with TRA staff, BellSouth agreed not to refuse basic service to customers with past due unregulated or non-regulated charges. In its letter of September 7, 2001, BellSouth stated that it will not disconnect local service where the customer does not agree to pay outstanding undisputed charges for unregulated service. BellSouth, however, may instigate normal collection procedures or block access to non-regulated services. BellSouth agreed in the Evidentiary Hearing to provide the toll blocking feature at no cost to the customer. Also, for those customers who prefer no toll blocking, BellSouth will provide the option whereby a deposit will be required from that customer in accordance with BellSouth's GSST. Section A2.4.2 of BellSouth's GSST sets out deposit requirements as follows:

Any applicant who is unable to establish a satisfactory credit standing with the Company or any subscriber whose credit standing has become impaired may also be required to deposit a sum up to an amount equal to either the charge for two months' local service or the charge for the estimated toll.

The Hearing Officer finds that this solution is fair and reasonable in that it provides customers with the opportunity to continue receiving basic telephone service while working out a plan for payment of outstanding charges and limits BellSouth's financial exposure by either implementing toll blocking or requiring deposits from customers. The Hearing Officer hereby approves BellSouth's proposal as set forth herein and as reflected in its Response to the Motion

⁵² BellSouth's General Subscriber Services Tariff, effective date: October 7, 1999, section A2. General Regulations, section A2.4 Payment Arrangements and Credit Allowances, section A2.4.3 Payment for Service, section H.

to Continue Service, the August 23, 2001 and September 7, 2001 letters from BellSouth (Exhibit A and Exhibit B) and the second revised Notification Letter (Exhibit C).

Coordination of Changeover of Service from Discount to BellSouth

The Hearing Officer determines that September 26, 2001, seven (7) business days from the date of this Order, is a fair and reasonable date for the changeover of service from Discount to BellSouth. A concern that arises from the changeover of service involves coordinating the conversion to eliminate the possibility of Discount customers paying twice for phone service for the same period. All Discount customers currently prepay for service while BellSouth does not offer pre-paid service. BellSouth explained the difficulty of trying to ascertain the billing cycle of each of Discount's customer in order to be able to begin invoicing those customers at the end of Discount's normal billing cycle.

In view of the additional burden and expense to BellSouth which would result from BellSouth ascertaining each customer's billing cycle and then synchronizing its billing with that of Discount, the Hearing Officer orders that the following procedure be followed by Discount and BellSouth. On the effective date of the changeover, as set forth in this Order, and following thereafter Discount is prohibited from invoicing any of its former customers for service. To the extent that customers pay Discount for service after the date of the changeover, Discount shall return all such payments to the customer. To the extent that Discount already has in its possession money from customers that includes payment for a period of time after which Discount is no longer providing service to those customers, Discount is ordered to hold that money in a separate account, and to refund such over-payment, within thirty (30) days of the date of this Order, to those customers who have pre-paid Discount for such service.

Discount is further ordered to file with the Authority, within forty-five (45) days of the date of this Order, a written report verifying that Discount has issued such refunds to its former customers. The written report shall also contain a summary of the number of customers and the amount of refunds issued. Failure to follow these directives will subject Discount to possible audit as well as other sanctions, as specified pursuant to Tenn. Code Ann. § 65-4-120. These requirements being in force, BellSouth is hereby permitted to invoice customers for service from the effective date of the changeover. This synchronization of billing cycles will protect customers from paying twice for telephone service in the same period.

Distribution of Escrow Funds

The purpose of the escrow arrangement between Discount and BellSouth was to provide BellSouth with some assurance that, even though Discount presently owed BellSouth a significant amount of money for services provided to Discount in the past, on a going forward basis BellSouth would receive some compensation for continuing to provide service to Discount. Such assurance intended by the escrow arrangement disappeared when Discount missed payments on numerous occasions without explanation, and then altogether ceased making payments to the escrow account. In its Supplemental Notice filed on August 15, 2001, BellSouth asked the Hearing Officer to order that the escrow account remains in effect and that Discount continue to make payments to that account.

The Hearing Officer finds that the purpose for maintaining the escrow arrangement no longer exists. Discount has totally disregarded its obligations under the escrow arrangement. BellSouth has been too long without payment from Discount for the service it has provided to Discount. For these reasons, the Hearing Officer orders that the escrow arrangement is

terminated as of the date of this Order and that all funds in the escrow account be disbursed to BellSouth within ten (10) days of the date of this Order.

IT IS THEREFORE ORDERED THAT:

1. The *Motion of Discount Communications to Require BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding* is denied;

2. BellSouth's proposal for providing service to Discount's customers, as set forth herein, is approved and BellSouth may begin to provide service to Discount's customers effective 12:01 a.m., September 26, 2001;

3. BellSouth may begin billing customers for service effective from the date of the changeover. Discount is prohibited from billing its former customers for service effective the date of the changeover;

4. Discount shall refund any payments received from its customers for any service provided by BellSouth after the date of the changeover and shall issue such refunds to customers not later than thirty (30) days from the date of this Order;

5. Discount shall file with the Authority not later than forty-five (45) days from the date of this Order, a written report verifying the issuance of all refunds to consumers and providing a summary of the number of customers and the amount of the refunds issued;


6. Failure on the part of Discount to cease billing and/or issue refunds to customers as provided in this Order may subject Discount to penalties as set forth in Tenn. Code Ann. § 65-4-120.

7. The escrow account established in this docket is hereby terminated effective as of the date of this Order and the proceeds being held in the escrow account shall be disbursed to BellSouth not later than ten (10) days from the date of this Order;


8. A Status Conference is hereby scheduled for **Tuesday, September 25, 2001** at **2:00 p.m.** in the Hearing Room of the Tennessee Regulatory Authority to determine the status of Discount's Second Complaint in light of Discount's most recent bankruptcy filing (Case No. 01-31167-L);

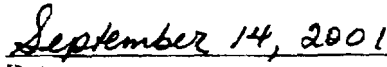
9. This Order is effective from the date of entry. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order; and

10. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final as of the date of entry. Thereafter, any party aggrieved by the decision of the Hearing Officer, may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.


J. Richard Collier, Hearing Officer

ATTEST:


K. David Waddell, Executive Secretary


Date



BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

joelle.phillips@bellsouth.com

Joelle J. Phillips
Attorney

615 214 6311
Fax 615 214 7406

August 23, 2001

The Honorable Richard Collier
Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

VIA TELECOPIER
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Henry Walker, Esquire
Boult, Cummings, Conners & Berry
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Vance Broemel, Esquire
Consumer Advocate Division
Post Office Box 20207
Nashville, Tennessee 37202

VIA TELECOPIER
(615) 532-2910

Re: *Second Complaint of Discount Communications, Inc. Against
BellSouth Telecommunications, Inc.*
Docket No. 00-01151

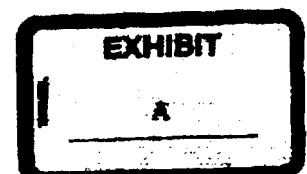
Dear Counsel:

During the hearing, on August 22, 2001 in the above-referenced docket, BellSouth presented its plan for converting end users from ATM/Discount Communications, Inc., to BellSouth and also presented a notification letter that BellSouth proposes to send to all end users. Two issues arose regarding BellSouth's plan:

1. The effect of the toll blocking feature that BellSouth intended to impose; and
2. The addition of certain information to the notification letter.

As explained in the hearing, BellSouth planned to impose the toll blocking feature to limit the customer's ability to incur substantial charges for long distance

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The Honorable Richard Collier
Henry Walker, Esquire
Vance Broemel, Esquire
August 23, 2001
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and other third party services. After further consideration, BellSouth has decided to alter its proposal to impose, instead, a blocking feature that only blocks calls to 900/976 numbers and N11 calls that typically involve a charge per call. This feature will not affect the end user's ability to place emergency service or 911 calls, long distance calls or Directory Assistance calls. While this change exposes BellSouth to the potential for uncollectible charges from some end users, we are making this change to the proposal in an attempt to address the concerns expressed by the Consumer Advocate Division and the TRA's Staff. In the event that the end user had a toll blocking feature with ATM/Discount, that same feature will be transferred along with their service to BellSouth, and the feature described above will not be added.

Additional language has been added to the notification letter that addresses the limited blocking feature, provides additional information about the change in service providers, and informs the end user of the charges that will apply to Directory Assistance calls and the exemption that is available for eligible end users.

Cordially,



Joelle Phillips

JP/jej

The Honorable Richard Collier
Henry Walker, Esquire
Vance Broemel, Esquire
August 23, 2001
Page 3

bcc: Charlie Howorth
Guy Hicks
Paul Stinson

IMPORTANT NOTICE ABOUT YOUR TELEPHONE SERVICE
PLEASE READ CAREFULLY

Effective (date) under an Order from the Tennessee Regulatory Authority in Docket 00-001151, your local telephone service has been switched from ATM/Discount Communications, Inc., to BellSouth. This letter will provide more information about this change.

First, you are not required to keep you local telephone service from BellSouth. You may choose any other local service provider in your area by contacting that provider directly, or you may simply disconnect your BellSouth service by calling yyy-yyyy. Unless you take some action, BellSouth will continue to provide your local telephone service.

Second, if you wish to continue your service with BellSouth, you must call zzz-zzzz within 30 days to verify your account information with us. In addition, we will need your Social Security Number, Driver's License number, or employment information for our records.

Finally, if you were receiving Lifeline service from ATM Discount Communications, Inc., you must also provide documentation of your eligibility to BellSouth in order to maintain your Lifeline service. If you think that you may qualify for Lifeline service from BellSouth after reading this information, or if you have any questions about Lifeline service, contact us at zzz-zzzz.

The following information also applies to your local BellSouth telephone service:

1. You may not be able to dial certain telephone numbers, such as "900", "976", or N11 numbers. This restriction will not affect your ability to place long distance calls or Directory Assistance calls. Contact BellSouth if you wish to remove this restriction.
2. BellSouth's tariffs will determine the rates, terms and conditions for your BellSouth service. The rates charged by ATM/Discount Communications, Inc., will no longer apply.
3. Under BellSouth's tariffs, you are allowed six (6) Directory Assistance calls per month at no charge. A charge will apply for each additional Directory Assistance call made during the month.
4. If you or someone living with you is unable to use a telephone directory or is 65 years old or older, an exemption from all charges for local Directory Assistance calls may be available. Please contact BellSouth for more information.

We are glad to provide your local telephone service.



BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

Joelle J. Phillips
Attorney

September 7, 2001

615 214 6311
Fax 615 214 7406

joelle.phillips@bellsouth.com

VIA HAND DELIVERY

The Honorable Richard Collier, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

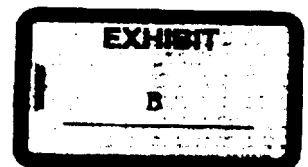
Re: *Second Complaint of Discount Communications, Inc. Against BellSouth Telecommunications, Inc.*
Docket No. 00-01151

Dear Mr. Collier:

This will address the issues raised by the TRA Staff during our conference call this morning on the above-referenced Discount matter.

1. Attached is a revised copy of BellSouth's proposed notification letter to former customers of Discount Communications, Inc. Item 3 has been revised to include the charge for local Directory Assistance Calls.
2. The notification letter directs former Discount customers to contact BellSouth at a telephone number provided in the letter. The contact telephone number provided in the notification letter will be the same as for any BellSouth residential customer who calls with questions regarding their BellSouth service. While BellSouth will provide a dedicated group of representatives to handle the conversion and the mailing of the notice letters, BellSouth does not intend to dedicate a special group to handle these calls from former Discount customers due to both administrative problems in managing such a system as well as costs to BellSouth associated with such a system. In order to ensure that the service representative handling the calls does so in accordance with the proper procedures, each former Discount customer's account will be marked during the conversion process with an indication that special procedures apply to this account. All service representatives will have ready access to those procedures. We are confident that this arrangement will provide prompt knowledgeable service to all BellSouth customers, including these former Discount customers. As previously indicated, BellSouth is already

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The Honorable Richard Collier, Hearing Officer
September 7, 2001
Page 2

giving special consideration to these customers, i.e., no charge for changing service providers, continued service without normal account verification and applicable deposit, and liberal payment arrangements for any past due amounts from other accounts. BellSouth cannot agree to absorb the additional expense that would be required to create a dedicated group to provide more special treatment of these customers. We believe that the steps outlined above are more than adequate to handle these calls.

3. As indicated during the conference call, BellSouth agrees to provide the Staff with a status report on these former Discount customers within 75 days after the effective date of an order from the Hearing Officer permitting BellSouth to change the service provider on these accounts.
4. With regard to any outstanding undisputed charges for unregulated service, BellSouth will not disconnect local exchange telephone service for refusal to pay these amounts or to pay a deposit related to these amounts. However, normal collection procedures will apply as with any existing BellSouth customer, and access to non-regulated services may be blocked. Again, this process represents a special treatment for former Discount customers, given that BellSouth would not ordinarily commence providing service to any other new customer without a deposit, if required due to an outstanding balance. In the case of former Discount customers, they will already have service from BellSouth and will be allowed to keep the service even if they refuse to address these outstanding amounts.

We trust that this response addresses the Staff's concerns. Please contact me or Paul Stinson at (615) 214-3839 if there are any additional questions.

Cordially,



Joelle Phillips

JP/jej

Enclosure

cc: Henry Walker, Esquire
Vance Broemel, Esquire

IMPORTANT NOTICE ABOUT YOUR TELEPHONE SERVICE
PLEASE READ CAREFULLY

Effective (date) under an Order from the Tennessee Regulatory Authority in Docket 00-001151, your local telephone service has been switched from ATM/Discount Communications, Inc., to BellSouth. This letter will provide more information about this change.

First, you are not required to keep you local telephone service from BellSouth. You may choose any other local service provider in your area by contacting that provider directly, or you may simply disconnect your BellSouth service by calling yyy-yyyy. Unless you take some action, BellSouth will continue to provide your local telephone service.

Second, if you wish to continue your service with BellSouth, you must call zzz-zzzz within 30 days to verify your account information with us. In addition, we will need your Social Security Number, Driver's License number, or employment information for our records.

Finally, if you were receiving Lifeline service from ATM Discount Communications, Inc., you must also provide documentation of your eligibility to BellSouth in order to maintain your Lifeline service. If you think that you may qualify for Lifeline service from BellSouth after reading this information, or if you have any questions about Lifeline service, contact us at zzz-zzzz.

The following information also applies to your local BellSouth telephone service:

1. You may not be able to dial certain telephone numbers, such as "900", "976", or N11 numbers. This restriction will not affect your ability to place long distance calls or Directory Assistance calls. Contact BellSouth if you wish to remove this restriction.
2. BellSouth's tariffs will determine the rates, terms and conditions for your BellSouth service. The rates charged by ATM/Discount Communications, Inc., will no longer apply.
3. Under BellSouth's tariffs, you are allowed six (6) local Directory Assistance calls per month at no charge. A charge of \$0.29 will apply for each additional local Directory Assistance call made during the month.
4. If you or someone living with you is unable to use a telephone directory or is 65 years old or older, an exemption from all charges for local Directory Assistance calls may be available. Please contact BellSouth for more information.

We are glad to provide your local telephone service.



ATTACHMENT 2

MORE INFORMATION ABOUT YOUR SERVICE

Dear Customer,

Your local telephone service and optional calling features have been recently transferred from ATM/Discount Communications, Inc. ("Discount") to BellSouth Telecommunications, Inc. ("BellSouth"). The products and services connected to reflect that Discount showed on your records at the time of the transfer to BellSouth. You have been notified of this transfer by this letter and the enclosed notice. This transfer was approved by the Tennessee Regulatory Authority's Order issued on September 14, 2001 in Docket 00-01151.

Although BellSouth is pleased to become your new local telephone service provider, you do have a choice in local telephone service providers. You can choose either to remain with BellSouth or select any other telecommunications service provider that offers local telephone service in your area. If you do decide to select another provider, you will need to contact the other provider to request the change. If you have any questions regarding your Discount telephone service, please direct any questions you may have to Discount. If you have any questions about your telephone service or features from BellSouth, please contact BellSouth at 557-6500.

As a service to our customers, and in compliance with the requirements of the Tennessee Regulatory Authority and FCC, we want to provide you with the following information concerning BellSouth's terms and conditions of service.

TERMS AND CONDITIONS OF SERVICE

- Depending on your location, Basic local telephone service is billed at the monthly rate of \$8.55 - \$12.15 for BellSouth's Flat Rate Main Station Line service. The Lifeline program provides a monthly credit to eligible customers. The amount of this credit is currently the lesser of \$12.00 or the charge for local service, including the access line, Touch-Tone, the Subscriber Line Charge and local usage.
- Services other than the basic line are optional, a full description of each optional product or service will be identified on your monthly bill. The rates BellSouth charges for optional service and features may be more or less than the rates that you paid to Discount for the same services.
- For additional information, or if you wish to make changes to your services, you may reference the Customer Guides section of your BellSouth Telephone Directory or visit our web site at www.bellsouth.com or call our office at 557-6500.
- Any tariffed new connection charge incurred as a result of transferring your service to BellSouth will not be charged to you.
- Charges for returned checks – An administrative charge will be applied by BellSouth whenever a check or bank draft presented for payment for service is not accepted by the institution on which it is written. The current charge is \$20.00 for each such check or bank draft.

- Deposits and advance payments – if a deposit or advance payment is later required to continue local telephone service with BellSouth, the advance payment will appear in the monthly statement section of your telephone bill and the deposit will appear in the payment information section of your telephone bill. For information on interest accrual and refund of deposit, please call 557-6500.
- Telephone number assignment changes – Your correct telephone number will be reflected on your telephone bill.
- You may terminate your service at any time.

Other helpful information is listed in the Customer Guides section of your BellSouth Directory. If you do not have a copy of this telephone directory, please call 557-6500. Information is also available at our web site at www.bellsouth.com.

We value and appreciate your business. We know that you will be very satisfied with service from BellSouth. If we can be of further assistance, please contact us at 557-6500.

CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of October 2001 served the parties of record to this action with a copy of the foregoing **EXPEDITED PETITION FOR WAIVER** by hand delivery, addressed to the parties listed below:

Magalia Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Room TW-B204
Washington, DC 20554

Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554


Lynn Barclay